

**IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL,
BENGALURU**

DATED THIS THE 21st DAY OF APRIL, 2022

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K.P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 314/2020

BETWEEN:

Mr. A. Nirmal Raj

S/o. Anthony

Aged about 62 years

R/at. No.301, Cheroy Manoer, 15,
5th Cross, C-Street, Hutchins Road,
St.Thomas Town,
Bengaluru-560 084.

...APPELLANT

(By Sri. Mohan Kumar. M, Advocate For M/s Lawman & Associates)

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru- 560 027.
Represented by its Secretary
2. M/s Chowriappa Construction Pvt Ltd,
A Company incorporated under the Companies Act, 1956
And Having Registered Office,
No.41, 6th Floor, Chirstu Complex,
Lavelle Road,
Bengaluru-560 001.
Represented by its Director

3. Mr. Ashok Chowriappa
S/o. Not known to appellant
Aged Major
Director of the Respondent No.2
No.41, 6th Floor, Chirstu Complex,
Lavelle Road,
Bengaluru-560 001.
4. Mrs. Preeti Chowriappa
W/o. Ashok Chowriappa
Aged Major
Director of the Respondent No.2
No.41, 6th Floor, Chirstu Complex,
Lavelle Road, Bengaluru-560 001.
5. Mr. Cherin A Paul
S/o. Late Paul Cherian
Aged about 66 years
R/at. Villa No. C-30, plot No.104,
Sterling Villa Grande,
Seegehalli, Hoskote, White Field Main Road,
Bengaluru-560 067.
6. Mrs. Saramma Cherian Paul
W/o Cherin A Paul
Aged 65 years
R/at Villa No.C-30, Plot No.104,
Sterling Villa Grande,
Seegehalli, Hoskote, White Field Main Road,
Bengaluru-560 067.

...RESPONDENTS

(R1-RERA served, unrepresented)
(Smt Pooja V, for M/s Law Associates, Advocates for R2 to R4)
(Sri Gautham Nettar, Advocate for R5 & R6)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) before the Interim Tribunal to call for the records pertaining to order dated 26th May, 2020 passed in CMP/190702/0003376 passed by the Adjudicating Officer, RERA Respondent-1 and direct the respondent to complete the apartment and hand over possession by setting of balance payment amount from the delayed compensation awarded in the impugned order etc.,

This appeal coming on for further argument, this day, the Hon'ble Chairman delivered the following:

J U D G M E N T

An allottee of a flat in a real estate project, having not fully satisfied with the order passed by the learned Adjudicating officer dated 26th May, 2020 passed in CMP/190702/0003376, has preferred this appeal seeking for enhancement of compensation.

Brief facts leading to this appeal are:

2. The appellant is a purchaser of an apartment bearing No.704 in the 7th floor of a project known as "Chowriappa Constellation" undertaken to be constructed on Bruhat Bangalore Mahanagara Palike Katha bearing No.5, in Converted Survey No.34/1, measuring One Acre Twenty Five Guntas, situated at Geddalahalli Villag, Horamavu Ward, Bangalore East Taluk, Bangalore, for a total sale consideration of Rs.69,19,804/- as mutually agreed. It was agreed that the project was to be completed and handed over within 26 months from the date of Agreement i.e., 04.04.2013 and in all probabilities it was to be completed by 04.06.2015. However, the project could not be completed and possession of the flat was not handed over to the allottee within the specified date.

3. The complainant, alleging that the promoter has failed to keep up his promise in handing over possession of the apartment

within the specified date and there is deliberate delay on the part of the promoter, filed a complaint with the RERA under Section 31 of the Act for delivery of possession of the apartment and for compensation for the delay.

4. The promoter who was arrayed as respondent in the complaint before RERA appeared through their counsel and resisted the complaint by filing statement of objections. It was contended on behalf of the promoter that the Complainant is at fault for non-compliance of the terms of agreement and since the agreement for sale is not registered, the same does not have any legal force and sought to dismiss the complaint.

5. The learned Adjudicating officer, after hearing the learned counsel for the allottee and the promoter and perusing the documents produced on both sides, allowed the complaint in part and granted the reliefs as under:

- a. "The complaint No. CMP/190702/0003376 is hereby allowed in part.
- b. The developer is hereby directed to pay delay compensation @ 9% on Rs.60,00,000/- from 05/06/2015 till 30/04/2017.
- c. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI on Rs.60,00,000/- from 01/05/2017 till 26/04/2018.

- d. The developer is hereby directed to pay delay compensation @2% above the MCLR of SBI on Rs.55,00,000/- from 27.04.2018 till 28.05.2018.
- e. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI on Rs.50,00,000/- from 29.05.2018 till 25.06.2018.
- f. The developer is hereby directed to pay delay compensation @2% above the MCLR of SBI on Rs.45,00,000/- from 26.06.2018 till the possession is delivered after obtaining the Occupancy Certificate with all amenities."

6. The allottee being not fully satisfied with the impugned order passed by the learned Adjudicating officer, has preferred this appeal, praying to allow the appeal and direct the promoter to complete the apartment and hand over possession by setting off the balance payment amount from the delayed compensation awarded by Adjudicating Officer as per the impugned order and for various other reliefs.

7. Sri Mohan Kumar M, learned counsel appeared for the Appellant-allottee. Respondent No.1-RERA though served, remained unrepresented. Smt Pooja V, learned counsel appeared for respondents 2,3 & 4 and Sri Gautham Nettar, learned counsel appeared for respondents 5 & 6.

8. Today, when the matter is listed for further arguments, learned counsel appearing for the appellant-allottee filed a memo and submitted to dispose of the appeal by remanding the matter to

the RERA with a direction to consider the complaint in the light of the Judgment of the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. in Civil Appeal No(s).6745 - 6749 of 2021 **reported in 2021 SCC ONLINE SC 1044.** The memo and submission are placed on record.

9. The Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD (*supra*) while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provision of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), has framed a question as follows:

"2. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?"

After elaborate discussion, the Hon'ble Apex court at paragraph 86 held that:

" 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', **a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing**

payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016”.

10. Whereas, Sri Gautham Nettar learned counsel appeared for respondent R5 & R6 opposed the Memo for remand of the matter and submitted that the Judgment of the Hon’ble Supreme Court in Newtech case cannot be made applicable to the present case and prayed for dismissing the appeal.

11. The submission of the learned counsel for respondents 5 and 6 that the said judgment cannot be made applicable to the present case which is pending, is not tenable. In applying the above decision of the Hon’ble Supreme court to the present case, we are supported by a Judgment of a Division Bench of our High court in the case of SURESH BABU Vs. SMT. S. SUSHEELA THIMMEGOWDA reported in 1999(2) Kar.L.J, 580, wherein following the ruling of the Hon’ble Supreme Court in the case of MAJOR GENERAL GAURAYA

Vs. S. N. THAKUR (AIR 1986 SC 1440), in paragraphs 13 to 15, has categorically held as under:

"13. In Major General A.S. Gauraya v S.N. Thakur, the Supreme Court held that "there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by this (Supreme) Court applies to all pending proceedings".

14. One of us had occasion to consider the effect of the decisions of the Supreme Court on pending proceedings in *Brindavan Roller Flour Mills Private Limited v Joint Commissioner of Commercial Taxes (Appeals), Mysore Division, Mysore*, and held as follows.- "A decision of the Supreme Court, being a declaration of the true and correct position of law becomes applicable to all transactions and proceedings which have not become final and concluded. The common use of the words 'prospective operation' and 'retrospective operation' with reference to a decision of the Supreme Court is misleading. The use of the words 'prospective' and 'retrospective' are more appropriate while referring to statutes. Rendering of a judgment by the Supreme Court is not the same as enactment of a statute. A decision of Supreme Court does not make the law, but merely explains and puts in proper perspective the true position and effect of law by declaring the law. The true position of law so declared exists from the very date of making the law and not from the date of declaration by the Supreme Court When a legislature enacts a statute, it creates rights or obligations and therefore, its operation can be prospective or retrospective, depending on the provisions of the statute. But when the Supreme Court gives a decision declaring the law, it does not create rights/obligations but merely identifies and declares the pre-existing rights/obligations and declares the true position of law. Consequently, the terms 'prospective' and 'retrospective' strictly do not apply to decisions of the Supreme Court, as all decisions are 'retrospective'. It is thus a cardinal principle of construction that every Statute is presumed to be prospective unless it is expressly or by necessary implication made retrospective in operation; and every decision of the Supreme Court declaring the law is retrospective, unless it is expressly or by necessary implication restricted to prospective operation. The true and correct position of law declared by the Supreme Court applies not only to

transactions and proceedings subsequent to the decision, but also to transactions and proceedings prior to the decision. This of course is subject to the rule of finality of proceedings; that is, the law declared by the decision cannot be used to reopen concluded decisions which have become final; it will apply to all pending transactions and proceedings. A proceedings in regard to which there is a provision for appeal, revision, review or rectification and the time prescribed for such remedy, has not expired, then such a proceeding cannot be said to have become final or concluded. It is no doubt true that where injustice and oppression will be caused by applying the decision to past transactions/proceedings, the Court while giving the decision, may stipulate that it will not affect past transactions. When and where the line should be drawn, restricting the application of the decision, are to be decided by the Court rendering the decision.. When the Supreme Court while rendering a decision, does not choose to restrict its operation, it will not be proper for the High Court to read such a restriction into the decision of the Supreme Court.

In *Golak Nath v State of Punjab* (AIR 1967 SC 1643) and *Managing Director, ECIL, Hyderabad v B. Karunakaran* (AIR 1994 SC 1074) the Supreme Court has made it clear that the discretion to restrict the operation of a decision prospectively, vests only with the Supreme Court. The High Court cannot, therefore, entertain or consider any contention or prayer for holding that the decision of the Supreme Court in any matter is only prospective in its operation or that it does not apply to pending cases”.

12. Therefore, in view of the submissions made by the learned counsel for the parties and the law laid down by the Hon'ble supreme court distinguishing the powers of the Authority and the Adjudicating Officer under the RERA Act and holding that the decision of the supreme court in any matter will apply to all pending transactions and proceedings, without expressing any opinion on the merits of the matter, we deem it appropriate to dispose of the above

appeal, set aside the impugned order as one without jurisdiction and remand the matter to the Authority for fresh consideration in the light of the Judgment of the Apex court in the case of *M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT LTD.,(supra)*.

13. Accordingly, we pass the following:

ORDER

- i) The appeal is allowed in part;
- ii) The impugned order dated 26th May, 2020 passed in CMP/190702/0003376 by respondent No.1- Adjudicating Officer, RERA, is set aside, as one passed without jurisdiction and the matter is remanded to RERA for fresh consideration in the light of the Judgment of the Apex Court in the case of *M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs. STATE OF UP & ORS. ETC. (supra)* and in accordance with law;
- iii) All the contentions of both the parties are kept open to be urged before RERA while considering the complaint afresh;
- iv) Keeping in mind that the matter relates to the year 2013, the Authority shall make an endeavor to dispose of the matter on merit, as expeditiously as possible, but not later than the outer limit of forty days from the date of parties entering appearance;
- v) Since the appellant-allottee as well as contesting respondents have entered appearance through counsel in this appeal, they are directed to appear before the RERA on 17.05.2022, without expecting further notice from the RERA;
- vi) In the event of the Authority not sitting on the said date, the matter may be taken up on the immediate next sitting day;

- vii) Parties are directed to extend their co-operation with the Authority for disposal of the complaint expeditiously;
- viii) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- ix) The Registry to comply with the provisions of Section-44 (4) of the RERA Act and to return the records to RERA if any;

No order as to the costs.

Sd/-
(JUSTICE B SREENIVASE GOWDA)
CHAIRMAN

Sd/-
(K P DINESH)
JUDICIAL MEMBER

Sd/-
(P.S SOMASHEKAR)
ADMINISTRATIVE MEMBER